

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

\_\_\_\_\_  
SAMUEL LASOFF, on behalf of himself, and  
other U.S. residents similarly situated,

Plaintiff,

v.

\_\_\_\_\_  
GOOGLE, INC., YAHOO! INC., and IAC  
INTERACTIVE CORP,

Defendants.

Civil Action No. 06-3542

**DECLARATION OF ELLIE SCHWIMMER**

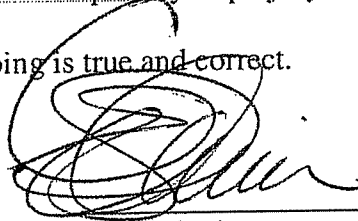
I, Ellie Schwimmer, hereby declare as follows:

1. I am an associate in the law firm of Keats McFarland & Wilson LLP and am counsel for Defendant Yahoo!, Inc. ("Yahoo!"). I have personal knowledge of the facts set forth herein. The contents hereof are true and correct to the best of my knowledge, information, and belief. If called to testify, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the Contract executed by Samuel J. Lassoff and the putative class members in this action.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the under the laws of the United States of America that the foregoing is true and correct.

Date: March 23, 2007



\_\_\_\_\_  
Ellie Schwimmer  
KEATS McFARLAND & WILSON LLP  
9720 Wilshire Boulevard, Penthouse Suite  
Beverly Hills, California 90212

10-12-04

**ADVERTISER MASTER SERVICES TERMS AND CONDITIONS**

**1. INTRODUCTION.** Overture Services, Inc. ("**Overture**") provides you, and any of your Affiliates (defined below) that participate in these terms and conditions by executing an Insertion Order (defined below), access to certain Overture products, services and/or programs (collectively, "**Programs**" and each, a "**Program**") subject to your compliance with these Advertiser Master Services Terms and Conditions (the "**Master Terms and Conditions**") and the terms and conditions of the Programs (the "**Program Terms**"). Please read these Master Terms and Conditions and Program Terms carefully. By enrolling in a Program, you agree to be bound and abide by these Master Terms and Conditions, the Program Terms, and the terms and conditions of any applicable Insertion Order(s) that you complete or that is completed on your behalf, including, without limitation, any renewal Insertion Orders (either online, if applicable, or offline, each an "**Insertion Order**"), including all payment terms. The Master Terms and Conditions, the Program Terms, all Insertion Orders and all payment terms collectively constitute the "**Agreement**". In the Agreement, (i) "**Advertiser**" means collectively the Advertiser and its Affiliates who execute an Insertion Order for any Program, (ii) "**Affiliate**" means, as to any person or entity, an entity or person that directly or indirectly (e.g. through one or more tiers of ownership) controls, is controlled by or is under common control with that person or entity, and the term "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities or a written voting rights agreement, and (iii) "**you**" and "**your**" refers to Advertiser. You agree that any of your agents, representatives, employees, or any person or entity acting on your behalf regarding any Program, shall be bound and abide by the Agreement. You further agree that you are bound by the Agreement whether you are acting on your own behalf or on behalf of a third party, including, without limitation, another advertiser. These Master Terms and Conditions and applicable Program Terms shall apply to all Insertion Orders and/or account(s) between the parties. Regarding each Insertion Order, the term of the Agreement will commence on the Effective Date set forth in the initial Insertion Order, and will continue in effect for the term and/or until the End Date if specified therein or in any renewal Insertion Orders, unless earlier terminated by either party in accordance with the terms of the Agreement (the "**Term**"). If there is no Insertion Order, the Term will commence on the date you enroll as an Advertiser and will end when terminated by either party in accordance with the terms of the Agreement.

**2. PAYMENT.** You agree to pay Overture all charges to your account in accordance with these Master Terms and Conditions, any applicable Insertion Orders, Programs Terms, and/or Payment Plans (defined in Section 3 below) you select, including, without limitation, all applicable taxes, in accordance with the then current billing terms (as such Payment Plans and billings terms may be amended or modified by Overture from time to time). Except as may be set forth in the Program Terms, any service fees charged to your account and any initial deposit, the value of which will be credited to your account, are non-refundable. Your right to access your account with Overture is subject to any limits established by Overture. If you have chosen a Payment Plan providing for a fixed maximum payment per month, you understand and agree that if your charges equal or exceed your monthly maximum payment, then your listings will be removed from the applicable **Overture Marketplace Results** (defined in the applicable Program Terms) and/or Program for the remainder of that month and you will incur a debit balance for the value of any unpaid charges incurred under your account, including, without limitation, any amounts accrued prior to the time your listings are actually removed. Charges will be posted to your account and must be paid pursuant to the terms of the Payment Plan you select before any of your listings will be made available in the applicable Overture Marketplace, Overture Marketplace Results, and/or Program. Further, you agree that you will be charged all amounts owed under the terms of any Programs in which you enroll. You authorize Overture to charge your credit card, charge card, debit card or financial institution account (hereinafter your "**Payment Method**") for all charges to your account. The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution providing your Payment Method. If Overture does not receive payment from the provider of your Payment Method, you do not make timely payment hereunder, or you exceed your monthly prepayment, you agree to pay all amounts due on your account upon demand, and Overture further reserves the right to either suspend or terminate your account with Overture. Suspension or termination includes, without limitation, deletion of your listings from any or all **Overture Marketplace(s)** (defined in the applicable Program Terms). You agree to submit any claims or disputes regarding any charge to your account in writing to Overture within sixty (60) days of such charge otherwise such claim or dispute will be waived and such charge will be final and not subject to challenge. If you fail to make payment as set forth herein, you will be responsible for all reasonable expenses (including, without limitation, attorneys' fees) incurred by Overture in collecting such amounts. All prices are in United States dollars and do not include sales, use, franchise, value-added or import taxes, customs duties or other taxes that may be assessed by any jurisdiction. If

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withholding taxes or any other taxes are imposed by any jurisdiction on the transactions pursuant to the Agreement, you shall pay such taxes and in such amounts as are necessary to ensure that Overture receives the full amount invoiced to you without offset or deduction. You shall promptly furnish to Overture the applicable receipts and/or certificates regarding such remittances as soon as reasonably practicable. Each party is responsible for all costs associated with the setup, maintenance and other performance obligations of such party under the Agreement. You agree to promptly update all information to keep your account and Payment Method current, complete and accurate (such as a change in billing address or e-mail), and to promptly notify Overture if your payment method is canceled, or if you become aware of a potential breach of security, such as the unauthorized disclosure or use of your user name or password. Changes to such information can be made at our DirecTraffic Center® located at <https://secure.overture.com/s/dtc/center/>. If you fail to provide Overture with any of the foregoing information, you agree that Overture may continue charging your account for use of any of the Overture Marketplaces, Programs, and/or the Overture Web Sites (defined in Section 4 below) unless you have terminated the Agreement or Program Terms.

**3. PAYMENT PLANS.** (a) From time to time, Overture may offer you the opportunity to enroll in a payment plan ("Payment Plan") to manage charges to your account. If you enroll in a Payment Plan, you agree to be bound by the terms of that Payment Plan. Non-Stop and Fixed Budget Payment Plans are offered on a periodic basis and are self-renewing unless or until your participation in such Payment Plan is terminated by you or Overture. Under such Payment Plans, if the amount to be charged to your Payment Method varies from the amount that you preauthorized, Overture will provide notice of the amount to be charged and the date of the charge at least 10 days before the scheduled date of the transaction. Your non-termination or continued use of an Overture Marketplace, Programs, and/or the Overture Web Sites reaffirms that Overture is authorized to charge your Payment Method automatically. Overture may submit those charges for payment and you will be responsible for such charges. Overture reserves the right to modify, suspend or terminate any Payment Plan and/or your participation therein at any time. If Overture modifies the terms of a Payment Plan, the modified terms of the Payment Plan will be reflected in an updated version of the Agreement posted on any of the Overture Marketplaces or any one of the Overture Web Sites or by e-mail notification to you. If you do not consent to such modified terms, you may elect to discontinue your enrollment in the Payment Plan at any time by providing written notice to Overture before the effective date of such modified terms. Your continued enrollment constitutes your acceptance of the terms of the Payment Plan as modified. (b) **NON-STOP TRAFFIC PAYMENT PLAN:** Under the Non-Stop Traffic Payment Plan, you preauthorize Overture to charge periodically your Payment Method on a recurring basis for the amount specified. If you equal or exceed this amount, this Payment Plan ensures uninterrupted service for you by (i) automatically replenishing your account using your Payment Method, (ii) paying for all charges in excess of the amount you have preauthorized, and (iii) applying the remaining balance to future charges. Your Payment Method will be charged for the preauthorized amount whenever your account has fewer than approximately three (3) days worth of funds remaining, as determined by Overture in its sole discretion. The foregoing amount then will be credited to your account and, after any debit balance that you may have incurred for charges not paid is first deducted, the balance will be available to pay for future charges; thus, while the amount charged to your Payment Method will remain the same from month-to-month, the amount actually available in your account to pay for future charges will vary depending upon the charges you have incurred. Overture will send you a notification to the e-mail address associated with your account after each such preauthorized transaction to notify you that your account has been replenished and your Payment Method debited. Such charges will appear on the periodic statement sent to you by the provider of your Payment Method. Unless you discontinue your enrollment in this Payment Plan, you understand that this preauthorization is valid until the termination of the Agreement with Overture or the discontinuation of, or your participation in, this Payment Plan as determined by Overture. For your future reference, you agree to retain, either by printing or otherwise saving, a copy of the Agreement, which provides the terms of your preauthorization. (c) **FIXED BUDGET PAYMENT PLAN:** Under the Fixed Budget Payment Plan, you determine a monthly maximum budget for charges to your account. When you enroll in the Fixed Budget Payment Plan, you preauthorize Overture to charge periodically your Payment Method each month up to the maximum amount that you specify. If you equal or exceed your available balance in any month, you will incur a debit balance; this debit balance will be deducted from the amount next charged to your Payment Method and the remaining balance will be credited to your account to pay for future charges. Overture will send you a notification to the e-mail address associated with your account after each such preauthorized transaction to notify you that your account has been replenished and your Payment Method debited. Such charges will appear on the periodic statement sent to you by the provider of your Payment Method. You understand that your Overture account may be taken offline for the remainder of any month in which your account equals or exceeds your budget amount. Unless you or Overture discontinue your enrollment or participation

in this Payment Plan, you understand that this preauthorization is valid until the termination of the Agreement or the Program Terms with Overture. For your future reference, you agree to retain, either by printing or otherwise saving, a copy of the Agreement, which provides the terms of your preauthorization.

**4. ACCESS.** For purposes of the Agreement, all Web pages that are owned, operated or hosted by or on behalf of Overture, including, without limitation, Overture's branded Web Site at <http://www.overture.com>, are referred to herein as the "Overture Web Sites." During the Term, you are authorized to access the Overture Web Sites solely to manage your Overture advertising account(s) or as otherwise authorized by Overture in writing. You agree that you will not use the Overture Web Sites or any content therein or data obtained therefrom for any other purpose and that you will not disseminate any of this information. Your right to access your account with Overture (including, without limitation, any login or other access information) is personal to you, non-transferable and non-assignable, and is subject to any limits established by Overture. You agree that you will not use any automated means, including, without limitation, agents, robots, scripts, or spiders, to access or manage your account with Overture or to monitor or copy the Overture Web Sites or the content contained therein except those automated means expressly made available by Overture, if any, or authorized in advance and in writing by Overture (for example, Overture-approved third party tools and services). The Overture Web Sites contain robot exclusion headers and you agree that you will not bypass Overture's robot exclusion headers (including using any device, software or routine to accomplish that goal), or to interfere or attempt to interfere with the proper working of the Overture Web Sites or any Program, Overture Marketplace or Overture system. Without limitation to the foregoing, you further agree that you will not take any action that imposes an unreasonable or disproportionately large load on the Overture Web Sites, any Programs, the Overture Marketplaces or Overture's infrastructure as determined by Overture.

**5. YOUR SITE.** You hereby acknowledge that Overture is not responsible for the content or maintenance of your Web site(s), or Web sites owned or operated by any third party (including, without limitation, other advertisers) nor is Overture responsible for order entry, fulfillment, payment processing, shipping, cancellations, returns or customer service concerning orders placed on your Web site(s) or Web sites owned or operated by any third party (including, without limitation, other advertisers). You represent, warrant and covenant that: (i) all information you provide in connection with the Agreement and on your Web site is, and will be updated to remain, current and accurate, and (ii) the Web site to which any listing links will look the same to all end users regardless of the end users' location. You agree that your Web site does not contain any Overture-owned or licensed content, including, without limitation, any Overture listings, except pursuant to a separate signed agreement with Overture.

**6. CONFIDENTIALITY.** "Confidential Information" means any information disclosed to you by Overture, either directly or indirectly, in writing, orally or by inspection of tangible objects, other than information that you can establish: (i) was publicly known and made generally available in the public domain prior to the time of disclosure to you by Overture; (ii) becomes publicly known and made generally available after disclosure to you by Overture other than through your action or inaction; or (iii) is in your possession, without confidentiality restrictions, prior to the time of disclosure by Overture as shown by your files and records. You shall not at any time (a) disclose, sell, license, transfer or otherwise make available to any person or entity any Confidential Information (except to your employees and agents who have a legitimate need to know such information and are bound in writing by confidentiality and non-use restrictions not less protective than those contained herein), or (b) use, reproduce or copy any Confidential Information, except as necessary in connection with the purpose for which such Confidential Information is disclosed to you and in accordance with the Agreement. You agree to take all measures to protect the secrecy, and avoid disclosure and unauthorized use, of the Confidential Information. You may disclose Confidential Information if required by law, provided that you give Overture prompt written notice prior to such disclosure and you provide assistance in obtaining an order protecting the information from public disclosure, and provided further that any such disclosure is limited to the minimum extent necessary to comply with the legally required disclosure. All Confidential Information shall remain Overture's personal property and all documents, electronic media and other tangible items containing or relating to any Confidential Information shall be delivered to Overture immediately upon Overture's request, and also, upon termination of the Agreement. You may not issue any press release or other public statement regarding the Agreement, Overture, its parent Yahoo! Inc. and/or Overture's or Yahoo! Inc.'s Affiliates, or partners without the prior written consent of an authorized person at Overture.



**7. REPRESENTATIONS AND WARRANTIES.** You represent, warrant and covenant that you have sufficient authority to enter into the Agreement and that your use of Overture's services is solely for lawful commercial and business purposes.

**8. INDEMNIFICATION.** You hereby agree to indemnify and hold harmless Overture, and its parent and its and their information providers, officers, directors, Affiliates, licensors, partners, licensees, consultants, contractors, agents, attorneys, employees, third party service providers and third parties authorized by Overture to make your listings, results, and/or Programs available in connection with third party Web sites, applications and/or e-mails, and their respective officers, directors, agents, Affiliates, and employees (each, an "Overture Entity" and collectively, the "Overture Entities") from any and all claims, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), that actually or allegedly result from your use of any Program, Overture Marketplace, Overture system or Overture Web Site, your Web site, or your breach of any terms or representations or warranties contained in the Agreement. You agree to be solely responsible for defending any Claim against or suffered by a third party, Overture and/or any Overture Entity, subject to Overture and/or any Overture Entity's right to participate with counsel of its own choosing, and for payment of damages or losses resulting from all Claims to a third party, Overture, and/or any Overture Entity provided that you will not agree to any settlement that imposes any obligation or liability on Overture and/or an Overture Entity without Overture's prior express written consent. Third party Web sites, applications and/or e-mails are collectively each a "Third Party Product".

**9. WARRANTY DISCLAIMER.** YOU EXPRESSLY AGREE THAT YOUR USE OF ANY PROGRAM (INCLUDING, WITHOUT LIMITATION, ANY OVERTURE DISTRIBUTION NETWORK(S) AS DEFINED IN THE APPLICABLE PROGRAM TERMS), OVERTURE MARKETPLACE, OVERTURE SYSTEM OR OVERTURE WEB SITE IS AT YOUR OWN RISK. THE PROGRAMS, THIRD PARTY PRODUCTS, OVERTURE DISTRIBUTION NETWORKS, OVERTURE MARKETPLACES, OVERTURE SYSTEMS, AND OVERTURE WEB SITES ARE ONLY AVAILABLE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. NEITHER OVERTURE NOR ANY OF THE OVERTURE ENTITIES MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER REGARDING THE PROGRAMS, THIRD PARTY PRODUCTS, OVERTURE DISTRIBUTION NETWORKS, OVERTURE MARKETPLACES, OVERTURE SYSTEMS OR OVERTURE WEB SITES, THE SUCCESS OF YOUR USE THEREOF AS MEASURED IN ANY WAY, ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED OR AVAILABLE THROUGH OR IN CONNECTION WITH OVERTURE, THE AGREEMENT OR THE PROGRAMS, THIRD PARTY PRODUCTS, OVERTURE DISTRIBUTION NETWORKS, OVERTURE MARKETPLACES, OVERTURE SYSTEMS OR OVERTURE WEB SITES OR ANY RESULTS OBTAINED THROUGH THE USE THEREOF, ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED OR AVAILABLE THEREFROM, OR WEB SITES LINKED THERETO OR THEREFROM. OVERTURE HEREBY DISCLAIMS ON BEHALF OF ITSELF AND ALL OVERTURE ENTITIES ANY AND ALL WARRANTIES INCLUDING, WITHOUT LIMITATION: (1) ANY WARRANTIES AS TO THE AVAILABILITY, ACCURACY OR CONTENT OF THE PROGRAMS, THIRD PARTY PRODUCTS, OVERTURE DISTRIBUTION NETWORKS, OVERTURE MARKETPLACES, OVERTURE SYSTEMS OR OVERTURE WEB SITES OR INFORMATION, PRODUCTS OR SERVICES AVAILABLE THEREFROM AND THROUGH THE WEB SITES LINKED THERETO OR THEREFROM OR THE SUCCESS OR NUMBER OF ANY CLICKS RESULTING THEREFROM; AND (2) ANY WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS, WHICH MAY VARY FROM STATE TO STATE.

**10. LIMITATION OF LIABILITY.** ANY LIABILITY OF OVERTURE AND THE OVERTURE ENTITIES INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR DAMAGES CAUSED OR ALLEGEDLY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, FAILURE OF DELIVERY OF MERCHANDISE, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR UNLAWFUL USE OF RECORDS, WHETHER FOR BREACH OF CONTRACT, TORTUOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF

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ACTION OR THEORY, SHALL BE STRICTLY LIMITED TO THE AMOUNT ALREADY PAID BY YOU TO OVERTURE PURSUANT TO THE AGREEMENT IN THE PRIOR SIX MONTH PERIOD. IN NO EVENT SHALL OVERTURE OR ANY OVERTURE ENTITY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, ARISING OUT OF THE AGREEMENT, THE USE OR INABILITY TO USE ANY PROGRAM, THIRD PARTY PRODUCT, OVERTURE DISTRIBUTION NETWORK, OVERTURE MARKETPLACE, OVERTURE SYSTEM OR OVERTURE WEB SITE OR WEB SITES LINKED TO THEREFROM, OR FOR ANY BREACH OF WARRANTY. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. YOU AGREE THAT YOU WILL NOT HOLD OVERTURE RESPONSIBLE FOR THE SELECTION OR RETENTION OF, OR ANY ACTS, ERRORS, OR OMISSIONS BY, ANY THIRD PARTY IN CONNECTION WITH THE PROGRAMS, THIRD PARTY PRODUCTS, OVERTURE DISTRIBUTION NETWORKS, OVERTURE MARKETPLACES, OVERTURE SYSTEMS OR OVERTURE WEB SITES OR WEB SITES LINKED TO THEREFROM, INCLUDING, WITHOUT LIMITATION, THIRD PARTY SERVICE PROVIDERS, THOSE WITH WHOM OVERTURE CONTRACTS TO OPERATE VARIOUS PORTIONS OF THE PROGRAMS, OVERTURE MARKETPLACES, OVERTURE SYSTEMS, AND/OR OVERTURE WEB SITES AND THOSE TO WHOM OVERTURE PROVIDES LINKS FOR CONTENT, ADVERTISING AND/OR ANY OTHER TYPE OF DATA OR INFORMATION.

**11. TERMINATION.** If you are dissatisfied with any aspect of a Program(s), your sole and exclusive remedy is to terminate the Agreement and/or the Program(s) Terms in writing. You and/or Overture may terminate the Agreement, any Program Terms, and/or your participation in any Program, at any time, for any reason or for no reason, unless otherwise set forth in any of the Program Terms. Notwithstanding anything contained in the Agreement to the contrary, Overture may, in its sole discretion, terminate or suspend your account, and/or discontinue or suspend your participation in all or part of any Program or on any Web site or Third Party Product that is part of an Overture Distribution Network. Termination, suspension or discontinuation includes, without limitation, removal of your listings from any or all of the Overture Marketplaces and Overture Distribution Networks. Reasons for Overture's determination to so terminate, suspend or discontinue your account or participation may include, without limitation, if Overture believes that you violated the Agreement or other policies or guidelines of Overture, a Third Party Product or a member of an Overture Distribution Network, or if Overture believes your conduct may be harmful to other consumers, advertisers or licensees who participate in (or offer to its users) an Overture Marketplace (and/or any part thereof). All decisions made by Overture in this matter will be final and neither Overture nor any of the Overture Entities shall have any liability regarding such decisions. Upon termination, suspension or discontinuation of any Program or your participation therein, all outstanding payment obligations incurred under such Program will become immediately due and payable. These Master Terms and Conditions shall terminate automatically if you have terminated all Program Terms and Insertion Orders. Sections 2, 3, 4 (last two sentences only), 5 (last sentence only) and 6 through 15 of these Master Terms and Conditions and any applicable provisions specified in the Program Terms shall survive any termination of the Agreement.

**12. NOTICES.** Overture may give general notices to you by posting on any Overture Marketplace or any one of Overture's Web Sites or by electronic mail to the e-mail address provided by you to Overture. It is your responsibility to ensure that your e-mail address and any other contact information you provide to Overture is updated and correct. All notices to Overture shall be sent via recognized overnight courier or certified mail, return receipt requested, to: Chief Legal Officer, Overture Services, Inc., 74 N. Pasadena Ave., 3rd Floor, Pasadena, CA 91103.

**13. CHOICE OF LAW.** Any dispute referring or relating to the Agreement or between the parties shall be governed by the laws of the State of California, without regard to its conflict of laws principles. You agree to submit to the exclusive jurisdiction of the state and federal courts located in Los Angeles, California or another location designated by Overture. Any claim against Overture arising from the Agreement shall be adjudicated on an individual basis, and shall not be consolidated in any proceeding with any claim or controversy of any other party.

**14. ELECTRONIC SIGNATURES EFFECTIVE:** (a) The Agreement is an electronic contract that sets out the legally binding terms of your use of Overture's products and services, including, without limitation, the Overture Web Sites. You indicate your acceptance of the Agreement and all of the terms and conditions contained or referenced in the Agreement and these Master Terms and Conditions and in any Programs Terms by clicking on the

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"I Accept" button in connection with your enrollment. This action creates an electronic signature that has the same legal force and effect as a handwritten signature. By clicking on the "I Accept" button, you accept the Agreement, including, without limitation, the Programs Terms and agree to the terms, conditions and notices contained or referenced therein. When you click on the "I Accept" button during enrollment, you also consent to have the Agreement provided to you in electronic form. You have the right to receive the Agreement in non-electronic form. You may request a non-electronic copy of the Agreement either before or after you electronically sign the Agreement. To receive a non-electronic copy of the Agreement, please send a letter and self-addressed stamped envelope to: Chief Legal Officer, Overture Services, Inc., 74 North Pasadena Ave, 3rd Floor, Pasadena, California 91103. (b) You also have the right at any time to withdraw your consent to have the Agreement provided to you in electronic form.

- Should you choose to withdraw your consent to have the Agreement provided to you in electronic form, Overture will discontinue your then-current username and password. This means that you will not have the right to use Overture's products and services, unless, and until, we issue you a new username and password. Overture only will issue you a new username and password after we receive a signed copy of a non-electronic version of the Agreement, which we will send to you upon written request.
- To withdraw your consent and/or request a non-electronic copy of the Agreement, please send a letter and self-addressed stamped envelope to: Overture, Chief Legal Officer, Overture Services, Inc., 74 North Pasadena Ave, 3rd Floor, Pasadena, California 91103.
- Prospective Nature. Your withdrawal of consent shall be effective within a reasonable time after we receive your withdrawal notice described above. Your withdrawal of consent will not affect the legal validity or enforceability of the Agreement provided to, and electronically signed by, you prior to the effective date of your withdrawal.

(c) Access and Retention. In order to access and retain the electronic Agreement, you must have access to the World Wide Web, either directly or through devices that access web-based content, and pay any service fees associated with such access. In addition, you must use all equipment necessary to make such connection to the World Wide Web, including, without limitation, a computer and modem or other access device. Please print a copy of the Agreement for your records. To retain an electronic copy of the Agreement, you may save it into any word processing program. We will notify you of any changes in the hardware or software requirements needed to access and/or retain the Agreement that create a material risk that you will not be able to continue to access and/or retain the electronic Agreement.

**15. OTHER.** You understand that Overture is a subsidiary of Yahoo! Inc., and that Yahoo and Overture use Overture's services to advertise certain of their respective products and services. The Agreement constitutes the entire agreement between the parties regarding the subject matter contained herein and supersedes all previous and contemporaneous agreements, proposals and communications, written or oral, between you and Overture regarding the subject matter contained herein. Only a written instrument executed by the party waiving compliance may waive the terms or covenants of the Agreement. No waiver by either party of a breach of any provision hereof shall be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. If any provision of the Agreement is held or made invalid or unenforceable for any reason, such invalidity shall not affect the remainder of the Agreement, and the invalid or unenforceable provisions shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable comes closest to the original intentions of the parties to the Agreement and has like economic effect. Overture shall have no liability under the Agreement by reason of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, acts of terrorism, insurrection, fires, flood, storm, explosions, earthquakes, internet outages, computer virus, Acts of God, war, governmental action, or any other cause that is beyond its reasonable control. The parties are independent contractors and nothing in the Agreement shall be construed to create, evidence, or imply any agency, employment, partnership, or joint venture between the parties. Neither party shall have any right, power, or authority to create any obligation or responsibility on behalf of the other. The Agreement is not intended to benefit, nor shall it be deemed to give rise to any rights in, any third party. You may not assign or transfer the Agreement, or sublicense, assign or delegate any right or duty under the Agreement, without Overture's prior written consent. Any assignment, transfer or attempted assignment or transfer in violation of this Section 15 shall be void and of no force and effect. Overture and any of its subsequent assignees may assign the Agreement, in whole or in part, or any of its

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rights or delegate any of its duties, under the Agreement to any party. Any rights not expressly granted in the Agreement are reserved by Overture, and all implied licenses are disclaimed. Headings used in the Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect the Agreement. Overture may change the Agreement and/or Overture's **Privacy Policy** (as posted on or linked from an Overture Web Site) at any time upon notice published on any of the Overture Marketplaces or any one of the Overture Web Sites or by e-mail notification to you. Any use by you, your Affiliates, agents, representatives, employees, or any person or entity acting on your behalf, of any Program, Overture Marketplace, Overture systems or Overture Web Site after such notice shall be deemed to be continued acceptance by you of the Agreement and Overture's Privacy Policy, including, without limitation, any amendments and modifications thereto. Notwithstanding anything to the contrary in Overture's Privacy Policy, Overture may share information described in its Privacy Policy with Overture's parent Yahoo! Inc. and/or its Affiliates, and nothing contained in the Agreement will prevent Overture from complying with privacy laws and regulations. Overture reserves the right to discontinue offering any of the Programs, Overture Marketplaces, Overture systems, and/or Overture Web Sites at any time. Except as otherwise specified by Overture, you agree that you will direct all communications relating to any Program, Overture Marketplace, Overture Distribution Network or Overture Web Site or your participation therein directly to Overture and not to any other entity. Terms used but not defined herein shall have the meanings given to such terms in the Insertion Order or applicable Program Terms. If there is any conflict between the Master Terms and Conditions and Program Terms, the Program Terms shall control.

#### CONVERSION COUNTER PROGRAM TERMS AND CONDITIONS

**1. INTRODUCTION.** Overture provides you access to Conversion Counter (defined below), as available through the Overture DirecTraffic Center located at <https://secure.overture.com/s/dtc/center/>, subject to your compliance with the Agreement (including, without limitation, these Conversion Counter Program Terms, any other applicable Program Terms, the Master Terms and Conditions and any applicable Insertion Orders). For purposes of these Program Terms, **Conversion Counter** means the product, service, and/or information that enables you to coordinate conversion data obtained from your Web site(s) regarding your Overture campaign with your Overture account information.

**2. LIMITED USE LICENSE.** Overture will provide you with proprietary software code (the "**Overture Code**") for insertion on your Web site(s) solely in the manner described by Overture on the Account Set-Up Web page at the DirecTraffic Center, and solely for the purpose of managing your Overture advertising account(s). Subject to the terms and conditions of these Program Terms, Overture grants you a world-wide, revocable, non-exclusive non-transferable, non-sublicensable, limited use license to use, execute, and display the Overture Code on your Web site(s) and access Conversion Counter through the DirecTraffic Center. Except for the limited license expressly granted in this Section, nothing in these Program Terms shall be construed as Overture granting you any right, title or interest in or to the Overture Code or any right under any patent, trade secret or other intellectual property rights of Overture. You acknowledge and agree that Overture owns all right, title and interest in and to the Overture Code (including, without limitation, all software and technology underlying any such product, service, and/or information) and all related intellectual and proprietary rights of any kind anywhere in the world. You agree that you will not use Conversion Counter, the Overture Code, or the results created thereby, or disseminate or distribute any of this information, in violation of these Program Terms.

**3. OWNERSHIP.** Overture owns all data collected by or through Conversion Counter and/or Overture Code and all reports, results, and/or information created, compiled, analyzed and/or derived by Overture from such data (collectively, "**Data**"). All Data shall be deemed Overture's Confidential Information. Each party hereto agrees to use the Data in strict compliance with its own privacy policy and these Program Terms.

**4. PAYMENT.** You agree to pay Overture the service fee, if any, for the version of Conversion Counter you sign up for in connection with your Web site(s), pursuant to the terms of the Payment Plan you selected, including, without limitation, all applicable taxes, if any, in accordance with the billing terms in effect at the time the service fee becomes payable. Overture reserves the right to start charging a service fee or change the service fee upon thirty (30) days written notice.



**5. PRIVACY.** In performance of the parties' obligations pursuant to these Program Terms, you agree not to transmit to Overture, its information providers, licensors, licensees, consultants, contractors, agents, attorneys or employees, and Overture shall not solicit or collect, any personally identifiable information of the visitors or customers to your Web site(s) unless required by law or court order, or otherwise agreed in writing and signed by an authorized representative of Overture. You represent, warrant, and covenant that at all times while the Overture Code is on your Web site, you will maintain a privacy policy on your Web site which shall, (a) be available, at a minimum, as a clear and conspicuous link from the main page of your Web site and on all Web pages where visitors' personally identifiable information is collected, (b) obtain all rights and/or permissions necessary for Overture to use the Data as contemplated under these Program Terms, and (c) contain language materially similar to the following:

"We have contracted with Overture services, Inc. ("Overture") to monitor certain pages of our Web site for the purpose of reporting Web traffic, statistics, advertisement 'click-throughs', and/or other activities on our Web site. Where authorized by us, Overture may use cookies, Web beacons, and/or other monitoring technologies to compile anonymous statistics about our Web site visitors. No personally identifiable information is collected by or transferred to Overture. For more information about how the information is collected and used by Overture, please see Overture's privacy policy at <http://www.contentOverture.com/d/USm/legal/privacy.html>."

**6. EFFECTS OF TERMINATION.** Upon any termination of your participation in Conversion Counter, there will be no refunds of the service fee. You agree to remove the Overture Code from all items under your possession, custody, and/or control within 15 days after termination of these Program Terms, and Overture reserves the right to charge you the service fee until such time as you remove the Overture Code and you notify Overture in writing of its removal. Sections 3, 4, 5, 6 and 7 of these Program Terms shall survive any termination of these Program Terms.

**7. ADDITIONAL TERMS.** Overture reserves the right to discontinue offering the Conversion Counter service at any time. Unless otherwise defined herein, terms not defined in these Program Terms have the meanings set forth in the Master Terms and Conditions.

**IF YOU SIGN UP FOR PRECISION MATCH™, WHICH NECESSARILY INCLUDES CONTENT MATCH™ (COLLECTIVELY "SPONSORED LISTINGS"), THE FOLLOWING TERMS AND CONDITIONS WILL APPLY:**

**SPONSORED LISTINGS PROGRAM TERMS AND CONDITIONS**

**1. USE.** Overture provides you access to the Overture Sponsored Listings Marketplace (defined below), as available through the Overture Sponsored Listings Marketplace Distribution Network (defined below), subject to your compliance with the Agreement (including, without limitation, these Sponsored Listings Program Terms, any other applicable Program Terms, the Master Terms and Conditions and any applicable Insertion Orders. For purposes of these Program Terms, the "Overture Sponsored Listings Marketplace" is the forum where you manage your Precision Match™ and Content Match™ listings for display in the Overture Sponsored Listings Marketplace Results in connection with keywords you select, approve or are mapped to your keywords as set forth below (collectively, "Selected Keywords"), subject to Overture's then-current policies and procedures. The Overture Sponsored Listings Marketplace Results are made available in connection with the Overture Sponsored Listings Marketplace Distribution Network, which is defined as the Overture Web Sites and various third parties who may be authorized by Overture to make the Overture Sponsored Listings Marketplace Results available as a link from, an add-on service to, or otherwise in connection with Third Party Products (defined as third party Web sites, applications and/or e-mails). (The "Overture Sponsored Listings Marketplace" is an "Overture Marketplace" for purposes of the Master Terms and Conditions. The "Overture Sponsored Listings Marketplace Results" are "Overture Marketplace Results" for purposes of the Master Terms and Conditions. The "Overture Sponsored Listings Marketplace Distribution Network" is an "Overture Distribution Network" for purposes of the Master Terms and Conditions.) You agree that your listings, including, without limitation, your domain name, may be included in the Overture Sponsored Listings Marketplace Results and may be made available in connection with the

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Overture Sponsored Listings Marketplace Distribution Network including, without limitation, Third Party Products. You understand and agree that Selected Keywords include the keywords that you have selected as well as certain misspellings, singular/plural combinations, and other related keywords that Overture maps to your listings based on the keywords you selected or approved, your listings themselves or the Web sites to which the listings link. Solely for illustration purposes, and without limiting the foregoing, if you select the keyword "book," your listing may also appear in response to the keywords "books" or "buy books." A listing, for purposes of the Agreement, may include, at Overture's discretion, text and/or graphics, and is subject to Overture's approval and these Program Terms. A listing that appears as a part of the Overture Sponsored Listings Marketplace Distribution Network may (or may not) include, without limitation, a listing title or listing description. You may submit your material for your listings either by email, file transfer protocol, telephone, fax, U.S. Mail or at the Online Sign-Up form located at <https://signup.overture.com/s/dtc/signup/> or, if you are modifying or adding to your listings, at our DirecTraffic Center located at <https://secure.overture.com/s/dtc/center/>.

**2. PAYMENT.** You understand and agree that, in addition to any service fees, you will be charged for all clicks on your listings (no matter whether a click occurred on an Overture Web Site or a Third Party Product within the Overture Sponsored Listings Marketplace Distribution Network), and that such charges will be based on the number of clicks on all your listings, multiplied by the cost of each of your listings, which shall be computed according to the Overture Sponsored Listings Marketplace rules (the "Click Charges"). If the Insertion Order provides for a fixed maximum payment per month, you understand and agree that if your Click Charges equal or exceed your monthly maximum payment, then your listings will be removed from the Overture Sponsored Listings Marketplace Results for the remainder of that month. You agree that the first \$30 of your initial deposit is non-refundable. Your listings in the Overture Sponsored Listings Marketplace are subject to Overture's then-current minimum bid and minimum cost requirements. Additionally, all Overture accounts that you create shall be subject to Overture's then current minimum monthly spend requirements. Find out more about Minimum Bid, Minimum Cost and Minimum Monthly Spend.

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**3. EFFECTS OF TERMINATION.** Sections 2, 3, 5, 6, and 7 shall survive any termination of these Program Terms.

**4. USE OF OVERTURE SUBMISSIONS.** By submitting or approving material or having material submitted on your behalf to the Overture Sponsored Listings Marketplace including, without limitation, information for a listing, you grant Overture, its licensees, third-party service providers and any entities in the Overture Sponsored Listings Marketplace Distribution Network, a royalty-free, perpetual, worldwide right and license to: (i) use all parts of the material, which use includes, without limitation, publicly performing, publicly displaying and distributing it, copying and manipulating it as reasonably necessary for such performance, display and distribution, and modifying it or using it commercially and authorizing others to do so; and (ii) in connection with your listings, access, index, cache, and display the Web site(s) to which your listings link, or any portion thereof by any means including, without limitation, web spiders and crawlers. This grant specifically includes, without limitation, the right of Overture, the entities in the Overture Sponsored Listings Marketplace Distribution Network, and Overture's licensees and third-party service providers to create and display copies of any text, graphics, images, audio, video, and other material included on such Web sites or portions thereof, including, without limitation, the right to create and display thumbnail and full-scale copies of any images or video included on such Web sites or portions thereof. Overture reserves the right to truncate, edit, refuse, reject or remove any listing at its discretion at any time. Overture does not guarantee that your listings will be placed in or available through the Overture Sponsored Listings Marketplace Distribution Network, the Overture Sponsored Listings Marketplace, or the Overture Sponsored Listings Marketplace Results, and Overture reserves the right to not place your listings and to stop placing or to remove your listings at any time for any reason. Final decision as to inclusion, relevancy, placement and the like will be at Overture's sole discretion.

**5. ACCEPTING OVERTURE SUGGESTIONS:** From time to time, Overture may provide suggestions to you for keywords, titles and/or descriptions or for any other element of a listing, but the final decision to authorize any suggestion is yours. By using a keyword, title, description, link, listing and/or other element of a listing that may have been suggested by Overture or its third-party service providers, you represent, warrant and covenant that such keyword, title, description, link, listing or other element thereof is authorized by you and in compliance with the Agreement. You agree that Overture shall not have any liability for Selected Keywords or your listings, or for any

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changes that you make to Selected Keywords or your listings based on suggestions by Overture or a third-party service provider.

**6. ADVERTISER'S RIGHTS AND RESPONSIBILITIES.** All information or material must be submitted in the form requested by Overture. You represent, warrant and covenant that you have the necessary rights to provide all information provided under the Agreement (including, without limitation, the listings) for use as described in the Agreement and that the Selected Keywords, titles, descriptions and all information, products and services contained or referenced in the listings and the Web sites to which they link: (i) do not violate any law, statute, ordinance, treaty or regulation; (ii) do not infringe in any manner any copyright, patent, trademark, trade secret or other intellectual property right of any third party; (iii) do not breach any duty toward or rights of any person or entity including, without limitation, rights of publicity or privacy, and have not otherwise resulted in or are not likely to result in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity; (iv) are not false, deceptive or misleading; (v) are not defamatory, libelous, slanderous or threatening; and (vi) are free of viruses, Trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, cancelbots and other computer programming routines that may potentially damage, interfere with, intercept, or expropriate any system, data or personal information. You also represent, warrant and covenant that your listings meet the standards and requirements set forth in these Program Terms.

**7. ADDITIONAL TERMS.** You understand that Overture is a subsidiary of Yahoo! Inc., and that Yahoo and Overture use Overture's services to advertise certain of their respective products and services. These Program Terms do not create a bailment of your listings and neither Overture nor any Overture Entity shall be deemed a carrier, bailee or warehouseman of any listings. Unless otherwise defined herein, terms not defined in these Program Terms have the meanings set forth in the Master Terms and Conditions.

**IF YOU SIGN UP FOR LOCAL MATCH,<sup>TM</sup> THE FOLLOWING TERMS AND CONDITIONS WILL APPLY:**

**LOCAL MATCH<sup>TM</sup> PROGRAM TERMS AND CONDITIONS**

**1. USE.** Overture provides you access to the Overture Local Marketplace (defined below), available through the Overture Sponsored Listings Marketplace Distribution Network (defined below), subject to your compliance with the Agreement (including, without limitation, these Local Match<sup>TM</sup> Program Terms, any other applicable Program Terms, the Master Terms and Conditions and any applicable Insertion Orders). For purposes of these Program Terms, the "Overture Local Marketplace" is the forum where you manage your local listing(s) (defined below) for display in the Overture Sponsored Listings Marketplace Results in connection with keywords you select, approve or are mapped as set forth below (collectively, "Selected Keywords"), subject to Overture's then-current policies and procedures. The Overture Sponsored Listings Marketplace Results are made available in connection with the Overture Sponsored Listings Marketplace Distribution Network, which is defined as the Overture Web Sites and various third parties who may be authorized by Overture to make the Overture Sponsored Listings Marketplace Results available as a link from, an add-on service to, or otherwise in connection with Third Party Products (defined as third party Web sites, applications and/or e-mails). (The "Overture Local Marketplace" is an "Overture Marketplace" for purposes of the Master Terms and Conditions. The "Overture Sponsored Listings Marketplace Results" are "Overture Marketplace Results" for purposes of the Master Terms and Conditions. The "Overture Sponsored Listings Marketplace Distribution Network" is an "Overture Distribution Network" for purposes of the Master Terms and Conditions.) You agree that your local listing(s), including, without limitation, your domain name, may be included in the Overture Sponsored Listings Marketplace Results and may be made available in connection with the Overture Sponsored Listings Marketplace Distribution Network including, without limitation, Third Party Products. For purposes of the Agreement, "local listing" may include, at the discretion of Overture or the entities in the Overture Sponsored Listings Marketplace Distribution Network, a title, description, location information, hours of operation, contact information, accepted payment methods, a link to your Web site (at your discretion), and a distance measurement/targeting radius around either your physical location or service area (which may be narrowed at the discretion of Overture or the entities in the Overture Sponsored Listings Marketplace Distribution Network). A local listing that appears as part of the Overture Sponsored Listings Marketplace Distribution Network may (or may not) include a listing title or listing description. When a user clicks on a local

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listing, a "Locator Page" may be generated based on your location information, which may be hosted by a third party and may contain text identifying your business address, contact information, hours of operation, accepted payment methods, map and, if applicable, a link to your Web site (at your discretion). Overture and/or the entities in the Overture Sponsored Listings Marketplace Distribution Network may, in their discretion, from time to time, determine whether a Locator Page is displayed and whether to change the information contained therein. The local listing and Locator Page are subject to Overture's approval and the terms of the Agreement. You may elect to not display your business location address on the Locator Page corresponding to the local listing, but if you do not, you instead must display your service area and certain contact information as required by Overture in its discretion. As a prerequisite for enrolling in the Local Match product, you must maintain a physical business location and/or serve customers within a certain radius of the business address you provide to Overture. When you sign up for the local Match product, you must provide Overture with a physical business address or the area that you agree to service customers, and keep such information current with Overture. You understand that Selected Keywords include the keywords that you have selected as well as certain misspellings, singular/plural combinations, and other related keywords that Overture maps to your listings based on the keywords you selected or approved, your listings themselves or the Web sites to which the listings link. Solely for illustration purposes, and without limiting the foregoing, if you select the keyword "book," your listing may also appear in response to the keywords "books" or "buy books." A local listing, for purposes of the Agreement, may include, without limitation and at Overture's discretion, text and/or graphics, and is subject to Overture's approval and these Program Terms. You may submit your material for your local listing(s) either by e-mail, file transfer protocol, telephone, fax, U.S. Mail, or at the Online Sign-Up form located at <https://signup.overture.com/s/dtc/signup/> or, if you are modifying or adding your local listing(s), at our DirecTraffic Center located at <https://secure.overture.com/s/dtc/center/>.

**2. PAYMENT.** You understand and agree that, in addition to any service fees, you will be charged for all clicks on your local listing(s), (no matter whether a click occurred on an Overture Web Site or a Third Party Product within the Overture Sponsored Listings Marketplace Distribution Network), and that such charges will be based on the number of clicks on all of your local listing(s), multiplied by the cost per click for the Selected Keyword(s), which shall be computed according to Overture's Local Marketplace rules as may be modified by Overture from time to time (the "Click Charges"). If the Insertion Order provides for a fixed maximum payment per month, you understand and agree that if your Click Charges equal or exceed your monthly maximum payment, then your listings will be removed from the Overture Sponsored Listings Marketplace Results for the remainder of that month. You agree that the first \$20 of your initial deposit is non-refundable and that the value will be credited to your account. Overture may in its discretion require a minimum fee per account not to exceed \$20 per month. However, before implementation of such minimum fee, Overture will provide you with 30 days written notice, and you agree to pay Overture such minimum fee unless you terminate your local account pursuant to Section 11 of the Master Terms and Conditions before the effective date of the minimum fee implementation. Your local listings in the Overture Local Marketplace are subject to Overture's then-current minimum bid and minimum cost requirements. Additionally, all Overture accounts that you create shall be subject to Overture's then current minimum monthly spend requirements. Find out more about Minimum Bid, Minimum Cost and Minimum Monthly Spend.

**3. EFFECTS OF TERMINATION.** Sections 2, 3, 5, 6, and 7 shall survive any termination of these Program Terms.

**4. USE OF OVERTURE SUBMISSIONS.** By submitting or approving material or having material submitted on your behalf to the Overture Local Marketplace (including, without limitation, information for a local listing) you grant Overture, its licensees, third-party service providers and any entities in the Overture Sponsored Listings Marketplace Distribution Network, a royalty-free, perpetual, worldwide right and license to: (i) use all parts of the material, which use includes, without limitation, publicly performing, publicly displaying and distributing such material, copying and manipulating it as reasonably necessary for such performance, display and distribution, and/or modifying it or using it commercially and authorizing others to do so; and (ii) in connection with your local listings, access, index, cache, and display the Web site(s) to which your local listings link, or any portion thereof, by any means including, without limitation, web spiders and/or crawlers. This grant specifically includes, without limitation, the right of Overture, the entities in the Overture Sponsored Listings Marketplace Distribution Network, and Overture's licensees and third-party service providers to create and display copies of any text, graphics, images, audio, video, and other material included on such Web sites or portions thereof, including, without limitation, the right to create and display thumbnail and full-scale copies of any images or video included on such Web sites or



portions thereof. Overture reserves the right to edit, truncate, refuse, reject or remove any local listing at its discretion at any time. Overture does not guarantee that your local listing(s) will be placed in, or available through, the Overture Local Marketplace, the Overture Sponsored Listings Marketplace Results or on any part of the Overture Sponsored Listings Marketplace Distribution Network, and Overture reserves the right to not place your local listing(s), and/or to stop placing or to remove your local listing(s) at any time for any reason. Final decision as to inclusion, relevancy, placement and the like will be at Overture's sole discretion.

**5. ACCEPTING OVERTURE SUGGESTIONS.** From time to time, Overture may provide suggestions to you for keywords, titles and/or descriptions or for any other element of your local listing(s) but the final decision to authorize any suggestion is yours. By using a keyword, title, description, link, listing and/or other element of a local listing that may have been suggested by Overture or its third-party service providers, you represent, warrant, and covenant that such keyword, title, description, link, listing and/or other element in the local listing is authorized by you and in compliance with the Agreement. You agree that Overture shall not have any liability for Selected Keywords or your local listings, or for any changes that you make to Selected Keywords or your local listings based on suggestions by Overture or a third-party service provider.

**6. RIGHTS AND RESPONSIBILITIES.** All information for local listings must be submitted in the form requested by Overture. You represent, warrant, and covenant that you have the necessary rights to provide all information provided under the Agreement (including, without limitation, local listings) for use as described in the Agreement and that the Selected Keywords, titles, descriptions and all information, products and services in the local listing(s) itself or, if applicable, through the Web site URL identified on the Locator Page corresponding to the local listing(s), and the Web site to which it links, (i) do not violate any law, statute, ordinance, treaty or regulation; (ii) do not infringe in any manner any copyright, patent, trademark, trade secret or other intellectual property right of any third party; (iii) do not breach any duty toward or rights of any person or entity including, without limitation, rights of publicity or privacy and/or has not otherwise resulted in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity; (iv) are not false, deceptive or misleading; (v) are not defamatory, libelous or threatening; and (vi) will be free of viruses, Trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, cancelbots or other computer programming routines that may potentially damage, interfere with, intercept, or expropriate any system, data or personal information. You also represent, warrant, and covenant that the local listing(s) for each location, including, without limitation, the Selected Keywords, and the title and/or description that you provide, fairly and accurately describe the goods or services that you sell at that particular physical business location or within the service area you have identified, and that you will keep all such information current and that the local listings meet the standards and requirements set forth in these Program Terms. If you sell different products or services at any physical location or service area, you agree to maintain separate accounts for each such location, or alternatively, remove Selected Keywords from your account that do not apply to all physical locations or service areas.

**7. ADDITIONAL TERMS.** You understand that Overture is a subsidiary of Yahoo! Inc., and that Yahoo and Overture use Overture's services to advertise certain of their respective products and services. Overture reserves the right to discontinue offering the Overture Local Marketplace or Local Match product at any time. These Program Terms do not create a bailment of your listings and neither Overture nor any Overture Entity shall be deemed a carrier, bailee or warehouseman of any local listings. Unless otherwise defined herein, terms not defined in these Program Terms have the meanings set forth in the Master Terms and Conditions.

The Agreement, including without limitation, the Master Terms and Conditions and Program Terms was last revised on January 2006.

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